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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	ET Docket No. 96-2
Rules to Establish a Radio	)	RM-8165
Astronomy Coordination Zone	)	
in Puerto Rico	)	

To: The Commission

PETITION FOR RECONSIDERATION

PUERTO RICO TELEPHONE COMPANY

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Dated: November 26, 1997

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SUMMARY

Puerto Rico Telephone Company ("PRTC") urges the Commission to reconsider three important aspects of its Report and Order in this proceeding. First, the Commission must control any interference standards that will govern the deployment of communications infrastructure in Puerto Rico. In the Report and Order, the Commission leaves this task to Cornell University ("Cornell"), although Cornell plainly hopes to secure ever greater protection for the operations of the Arecibo Radio Astronomy Observatory ("Observatory"). Indeed, Cornell intends to employ a "dynamic definition" of interference, retaining the ability to refine and redefine what it considers to be unacceptable interference. Without objective interference standards either promulgated by the Commission or subject to its prior approval, Cornell will be permitted to delay the development of communications services on a whim. At bottom, the Commission should not place Cornell in any position to hold up infrastructure deployment with its evolving interference standards.

Second, PRTC urges the Commission to place restrictions on what "reasonable efforts" will be required to satisfy Cornell in a given instance. In the Report and Order, the Commission declines to specify a range of required modifications, explaining that there already exists "some understanding among service providers of what constitutes a 'reasonable effort.'" Yet, the record in this very proceeding is not even clear as to what

Cornell or the Commission expects to constitute "reasonable efforts," and Puerto Rico service providers should not have to guess about their duties each time Cornell elects to pursue new lines of experimentation. Further, relying on some local "understanding" of reasonable efforts provides no guidance for new entrants to the Puerto Rico wireless services market. Particularly in light of Cornell's patent interest in gaining even greater spectrum rights for the Observatory, the Commission must place limits on what modifications Puerto Rico service providers will be required to make.

Finally, PRTC urges the Commission to reconsider its decision to apply coordination filing requirements to services for which individual site licenses are not issued. The Commission developed its wireless geographic licensing policy "so that licensees can build their systems in response to market demands without having to come to the Commission for additional authorizations." It is quite inconsistent to create a duty to file notifications with Cornell just as licensees are relieved of any duty to file with the Commission. While the Commission reasons that it will be "minimally burdensome" to notify Cornell of any planned facilities, the Commission does not address the substantial burden encountered if Cornell invokes its extra-regulatory coordination rights. The Commission should not leave the construction of otherwise streamlined services in the hands of an interested private party.

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	)	RM-8165
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To: The Commission

PETITION FOR RECONSIDERATION

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, submits this Petition for Reconsideration of the captioned Report and Order, FCC 97-347, released by the Commission on October 15, 1997. The Commission's summary of the Report and Order was published in the Federal Register on October 27, 1997.[1]

I. INTRODUCTION

PRTC is pleased that Puerto Rico is home to the Arecibo Radio Astronomy Observatory ("Observatory"), and PRTC supports the mission of the Observatory and Cornell University ("Cornell") to explore planetary systems, pulsars, and extraterrestrial life. As an Observatory official noted earlier in this proceeding, "An excellent working relationship has been established between . . . the Arecibo staff and the microwave link operators like Puerto Rico Telephone."[2] Just as in the mainland United States,

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[1] 62 Fed. Reg. 55,525 (1997).

[2] Dr. Ing. Willem A. Baan, Senior Research Associate and Frequency Manager, Arecibo Observatory, Technical Statement Concerning the Radio Frequency Interference Environment at the Arecibo Observatory in Puerto Rico at 8 (submitted to the

however, Puerto Rico's residents and businesses rely on a variety of wireless communications services for health and safety and for commercial utility. Although the Observatory is a fascinating research tool, the fact that the Observatory is located in Puerto Rico should not effectively consign these wireless services to a second class radio status.

For this reason, PRTC petitions the Commission to reconsider certain aspects of its Report and Order in this matter. First, PRTC urges the Commission to establish interference standards that will govern the radio coordination process in Puerto Rico, or to oversee Cornell's development of such standards. Cornell plainly hopes to achieve even greater restrictions on the operations of Puerto Rico radio facilities and commits only to outlining a "dynamic" definition of interference with its operations. Cornell should not be permitted to delay the introduction of new services with an undefined, evolving interference standard. Second, PRTC urges the Commission to place restrictions on the types of reasonable efforts that will be required to satisfy Cornell's interference concerns. New and existing Puerto Rico service providers should have reasonable notice as to the range of modifications the Commission will require for a given service at a given time. Finally, PRTC urges the Commission to reconsider its decision to apply the formal coordination filing requirements to services for which individual

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Commission as Attachment B to Cornell's Petition for Rulemaking, Nov. 30, 1992).

site licenses are not issued. It would undermine the purpose of the Commission's streamlining policy to require a transmitter site application to be prepared for Cornell when none is required for the Commission. At bottom, wireless communications are as critical in Puerto Rico as they are in the mainland United States, and the Commission should not give Cornell the unfettered ability to delay the introduction of new services.

II. THE COMMISSION MUST CONTROL ANY INTERFERENCE STANDARDS THAT WILL GOVERN THE INTRODUCTION OF NEW SERVICES

First, PRTC urges the Commission to reconsider its decision to rely on Cornell to establish interference rules that will govern this process in the first instance.[3] Although the Commission makes clear that it will "remain the sole entity that has the authority to rule on any service applications,"[4] Cornell's lack of objectivity — and its professed inability to anticipate what types of interference will prompt it to demand engineering modifications — counsels against giving Cornell the unrestricted right to delay the institution of radio services in Puerto Rico. Without clear Commission standards, Cornell will be in a position to exercise its extra-regulatory "coordination" rights inappropriately to delay the construction of needed facilities each time perceives the need to use new frequencies.

As a threshold matter, in its filings in this very proceeding, Cornell exhibited a lack of objectivity regarding its

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[3] Report and Order at ¶ 34.

[4] Id. at ¶ 33.

current and future legal role as a non-primary user of spectrum in Puerto Rico. In its Comments, Cornell declared that "spurious interfering signals increase the time necessary to conduct research and result in wasted observing time. With the increasing demand for using the Arecibo telescope, the increased RF interference hampers research all the more."[5] Cornell also emphasized that it:

> did not mean to concede that the need for protection would always be secondary. The Commission's proposal seems to suggest that the public interest benefits of radio astronomy research in Arecibo would not outweigh the benefits of new or modified communications in Puerto Rico.[6]

While Cornell did concede that Commission licensees "are rightfully using the spectrum licensed to them,"[7] it cautioned that "there may be some situations where the Commission would be required to consider whether the public interest would be better served by affording protection to radio astronomy research."[8] For its part, Cornell expects to "alert[] spectrum users of the

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[5] Cornell Comments at 3. See also id. at 2 ("With the completion of the [Gregorian] upgrade . . . the Observatory will be even more susceptible to radio frequency interference"); id. at 3 ("External RF radiation [in Puerto Rico] has dramatically increased over the past decade and is likely to continue to increase. The harmful effects will only intensify with the greatly increased sensitivity resulting from the Gregorian Upgrade"); Cornell Reply Comments at 4 ("the Upgrade will mean a corresponding increase in the susceptibility of the Observatory to interference").

[6] Cornell Comments at 5.

[7] Id. at 7.

[8] Id. at 6 (emphasis added).

existence of the Observatory and of the necessity of tailoring applications to protect the Observatory."[9]

Plainly, Cornell is not the appropriate party to develop and disseminate interference standards that will govern virtually all radio communications in Puerto Rico, and formally inserting Cornell into the Commission's spectrum and facilities licensing process eviscerates the neutral atmosphere in which regulation should occur. Underscoring this point is the following observation:

> Cornell is willing to accept the 15 GHz limit of the proposed rules for the present, but it suggests that Commission *[sic]* commit to revisiting this limit when the Observatory's use of such frequencies begins to pose interference problems in the future.[10]

Thus, although Cornell is not the primary user of the vast majority of frequencies on which it intends to conduct experiments, it expects existing licensees to make way each time it elects to use new spectrum. This perspective will not likely serve as the foundation for productive coordination in a radio environment as congested as that in Puerto Rico.[11]

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[9] Cornell Reply Comments at 9 (emphasis added).

[10] Cornell Comments at 9 (emphasis in original).

[11] Despite this congestion, there is no record evidence in this proceeding of the need for any formal coordination scheme. In its Comments, Cornell described its successful coordination with WCCV-TV, the owner of which cooperated with Cornell to protect the Observatory's research capabilities. Cornell Comments at 7-8. In its Reply Comments, Cornell described its successful coordination with PRTC regarding a cellular telephone site and a microwave link and with a low power television station located near the Observatory. Cornell Reply Comments at 6. Cornell, though, never provided an example of informal coordination that did not work. Instead, Cornell insisted that

This is particularly the case where there will be no fixed interference standards to guide current and prospective licensees. Cornell proposes to provide "some technical data defining interference limits,"[12] but prefers "a dynamic definition"[13] that "can be viewed as a starting point for the determination of potential interference, but not necessarily as a hard-and-fast immutable standard."[14] According to Cornell, "certain assumptions will have to be made and the levels for the affected bands may be averages which will have to be refined (and redefined) depending on the specific application involved."[15] Thus, for example, anticipating a new series of experiments using a given frequency, Cornell may "redefine[]" what is "acceptable" interference to the surprise of Commission licensees. In the time it takes to have the Commission "resolve the dispute," services, coverage, and customers will be on hold.

Such delay is particularly dangerous as more citizens come to rely on wireless services to connect to medical professionals and fire and law enforcement authorities. Just last week, the

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this success "does not undercut the need for mandatory coordination," adding without elaboration that "[n]ot every service provider has been as cooperative with the Observatory as ha[s] PRTC . . . ." Id. at 7 n.11. Neither the Commission nor Cornell addresses how informal coordination somehow is inadequate to protect the Observatory or why Commission rules are necessary to upset a process that appears to be working.

[12] Cornell Reply Comments at 6.

[13] Id. at 8.

[14] Id. at 9.

[15] Id.

Los Angeles Times told the story of a woman who is suing a Los Angeles cellular service provider because her calls to 911 did not connect as she was being carjacked.[16] The cellular network's signal was weak in the area where the crime was committed, and the victim was shot in the face as she held the silent phone.[17] Against this background, the Commission should not permit a single cellular or personal communications service ("PCS") transmitter in Puerto Rico to lie dormant while Cornell demands changes under some novel interference standard. Matters of health and safety are simply too important to be subject to the whim of an interested party.

For these reasons, courts have held that "an agency may not delegate its public duties to private entities, particularly private entities whose objectivity may be questioned on grounds of conflict of interest."[18] Instructive here is the recent decision in Perot v. Federal Election Commission,[19] where the Court determined that the Federal Election Commission ("FEC") did not impermissibly delegate authority over presidential debates insofar as the private entities sponsoring the events were

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[16] Michael A. Hiltzik, Woman's Ordeal Raises Concerns About Cell Phones and 911 Calls, L.A. Times, Nov. 16, 1997, at A1 (attached hereto as EXHIBIT 1).

[17] Id.

[18] Sierra Club v. Sigler, 695 F.2d 957, 963 n.3 (5th Cir. 1983) (citation omitted). See also Population Institute v. McPherson, 797 F.2d 1062, 1072 (D.C. Cir. 1986).

[19] 97 F.3d 553 (D.C. Cir. 1996), cert. denied, 117 S. Ct. 1692 (1997).

required to develop "objective criteria" for debate participation.[20] According to the Court, "In adopting such standards, a staging organization acts at its peril, unless it first secures an FEC advisory opinion . . . ."[21] Significantly, without such prior governmental approval, a staging organization is exposed to potential federal penalties stemming from the debate participation criteria.[22]

Here, in contrast, such objectivity and meaningful Commission oversight are missing. Although the Commission purports to delegate no authority in this instance,[23] Cornell plainly is not a disinterested party and it is left free to exercise substantial effective control over Puerto Rico wireless service applicants and licensees. At a minimum, under the rules adopted in the Report and Order, Cornell will receive information on proposed facilities no later than the date on which the Commission receives such information. In the case of the Commission's new geographic authorizations, Cornell will receive the only notice of such construction, and Cornell — alone among all other parties — will have a special period in which to demand modifications to the proposed facilities. While it is the duty of the Commission to give force to Cornell's substantive

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[20] Perot, 97 F.3d at 559-560.

[21] Id. at 560.

[22] Id.

[23] Report and Order at ¶ 33.

demands,[24] Cornell may invoke these extra-regulatory "coordination" rights to delay any new construction for so long as it takes the Commission to "resolve the dispute." It is not inconceivable that, in time, the threat of such delay may be used to exert leverage against applicants and licensees to Cornell's benefit. To be certain, this power to delay applications under self-prescribed interference standards effectively is the power to deny applications.

Against this background, PRTC urges the Commission to establish objective interference standards to govern any coordination process in Puerto Rico. Alternatively, the Commission should require Cornell to submit its "dynamic" standards to the Commission for review — subject to public notice and comment — prior to putting them into force. In either case, Cornell cannot be sole arbiter of the threshold interference standards pursuant to which licenses or sites will or will not be approved on time. Given Cornell's patent lack of objectivity regarding its role in the use of electromagnetic spectrum and its professed inability to establish anything but a "dynamic definition" of interference, the Commission should not place Cornell in a position to control the timetable on which important communications infrastructure is deployed. Although Cornell may not have the last word on license or site approval, its ability to delay approval with a "we-know-it-when-we-see-it" interference standard is too powerful to be left unchecked.

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[24] Id. at ¶ 40.

III. THE COMMISSION MUST PLACE RESTRICTIONS ON THE TYPES OF REASONABLE EFFORTS REQUIRED TO ACCOMMODATE CORNELL

Similarly, PRTC urges the Commission to place restrictions on the types of "reasonable efforts" that would be required to accommodate Cornell. Despite the requests of a number of parties in this proceeding, the Commission declined to establish any range of "reasonable efforts" in the Report and Order, ruling instead that "the use of this term in [the] rules without definition" is permissible.[25] The Commission added, "[W]e are encouraged that the Observatory has in the past successfully coordinated informally with many providers of Puerto Rican Island radio services, and believe that there is some understanding among service providers of what constitutes a 'reasonable effort.'"[26] PRTC urges the Commission to reconsider this choice.

In particular, it is not evident even from the record in this proceeding what Cornell — or the Commission — expects to be a "reasonable effort." For example, in its Notice of Proposed Rule Making ("NPRM"), the Commission reported Cornell's position that "general filtering and modification of the beam pattern are useful," but that, in the case of broadcast stations, "more formal time-sharing could be implemented."[27] In its Comments, Cornell confirmed its view that it would be reasonable to expect television stations periodically to "cease[] or reduce[]

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[25] Report and Order at ¶ 39.

[26] Id.

[27] NPRM at ¶ 26.

operations" to assist the Observatory.[28] Yet, in its Reply Comments, Cornell states that "the steps outlined in the NPRM at ¶ 5 and those cited as examples here, are sufficient notice of what the Commission expects to be 'reasonable efforts' under the new rules."[29] Putting aside the fact that Cornell has no basis to know "what the Commission expects" in this matter, neither paragraph 5 of the NPRM nor Cornell's Reply Comments mentions time-sharing. One is left to wonder whether it remains an option, and the Commission does nothing to clarify the matter.[30]

Moreover, although the Commission is optimistic that "there is some understanding among service providers of what constitutes a 'reasonable effort,'" Cornell plainly has interest in pursuing even greater protection for the Observatory than that established in the Report and Order — particularly as the sensitivity of its equipment is increased or as it decides to use new frequencies. Yet, existing service providers should not be left to guess about the range of the expected "reasonable efforts" each time Cornell chooses a new direction. Similarly, even if some understanding did exist "among service providers" in Puerto Rico, such an "understanding" would provide little guidance to new entrants to

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[28] Cornell Comments at 8.

[29] Cornell Reply Comments at 6-7 (footnote omitted).

[30] To be certain, instituting a time-sharing requirement — or any substantial change in the operating parameters of a station — would be a dramatic modification of a station license, which modification the Commission may not make without due process and basic administrative procedures.

the Puerto Rico radio services market, and the Report and Order is not any more helpful.

At bottom, Puerto Rico applicants and licensees should have better information as to their rights and obligations when operating within the contours of the Commission's rules. As the United States Court of Appeals for the District of Columbia Circuit wrote in a separate context:

> It is beyond dispute that an applicant should not be placed in a position of going forward with an application without knowledge of requirements established by the Commission, and elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected.[31]

In this case, however, the Commission has abdicated its responsibility to articulate objective requirements and standards on the theory that there is already "some understanding" of the rules to be followed here. On this basis, the Commission does not even undertake to craft reliable limits. PRTC urges the Commission to reconsider this choice, and to place restrictions on what will constitute "reasonable efforts" in this context.

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[31] McElroy Electronic Corp. v. FCC, 990 F.2d 1351, 1358 (D.C. Cir. 1993) (quoting Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551, 1558 (D.C. Cir. 1987)).

IV. FORMAL COORDINATION SHOULD NOT APPLY TO SERVICES FOR WHICH INDIVIDUAL LICENSES ARE NOT ISSUED

Finally, PRTC urges the Commission to reconsider its decision to apply the coordination filing requirements outlined in the Report and Order to services for which individual site licenses are not issued.[32] It is entirely inconsistent with the Commission's effort to streamline the application process for commercial wireless services to require these operators to coordinate their construction with Cornell. Earlier this year, for example, the Commission wrote:

> we believe that using predefined geographic areas better serves the public interest than other types of licensing schemes, such as site-specific licensing. Under a geographic licensing approach, licensees can build and modify their systems in response to market demands without having to come to the Commission for additional authorizations. Thus, such an approach speeds the licensing process and reduces the need for multiple filings to serve a single geographic license area (which are required under a site-specific licensing approach).[33]

In this case, although the Commission believes that "it will be minimally burdensome for [licensees] to notify the Observatory,"[34] the Commission does not address the delay that will result if Cornell elects to demand transmitter modifications

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[32] Report and Order at ¶¶ 44-45.

[33] Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, FCC 97-164, ¶ 112 (rel. May 8, 1997) (footnote omitted) (emphasis added). Similarly, in its Part 22 Order the Commission wrote, "[T]he record supports eliminating the notification requirement for most additions and modifications and that our doing so will save substantial industry and Commission resources." Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd 6513, 6519 (1994).

[34] Report and Order at ¶ 44 (emphasis added).

under a "dynamic" interference standard after such notification. The very essence of its streamlining approach is implicated by Cornell's unfettered coordination rights, though the Commission is silent on this effective change in wireless policy for Puerto Rico.

This point is underscored by Cornell's submissions in this proceeding. Cornell reports that "if an applicant disagrees with the Observatory's analysis, it is free to terminate the coordination process and proceed with regular Commission application processing."[35] Yet, in the case of broadband PCS, for example, there is no "regular Commission application processing." Broadband PCS licensees are authorized to develop microcellular systems within their licensed service areas without applying to (or even notifying) the Commission. Under the rules established in the Report and Order, however, the Commission has inserted Cornell into that process, permitting it to delay the implementation of broadband PCS networks. Thus, contrary to Cornell's suggestion, if "an applicant disagrees with the Observatory's analysis," it must wait for the Commission to resolve the dispute. This is not "minimally burdensome" under any interpretation.

Moreover, the Commission's NPRM in this matter failed to provide any reasonable notice that it was considering a change to its policy regarding streamlined application processing in Puerto Rico. Although the Commission listed Parts 22 and 24 (and

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[35] Cornell Reply Comments at 8 n.14.

others) among potentially affected services in the NPRM, the NPRM indicated repeatedly that the Commission's proposals would apply only to facilities for which applications are filed with the Commission.[36] In particular, the Commission proposed that "applicants for new or modified facilities" would notify the Observatory, and that "submission of a copy of the relevant technical portions of the application to the Observatory would suffice to meet this requirement."[37] Nowhere does the Commission mention its streamlining policy.

Although PRTC and others urged the Commission to clarify that its proposals did not apply to services for which no individual site licenses are issued, those Comments do not take the place of formal notice by the Commission. It is well established that:

> an agency may not turn the provision of notice into a bureaucratic game of hide and seek. . . . [E]ach interested party is not required to monitor the comments filed by all others in order to get notice of the agency's proposal; hence, comments received do not cure the inadequacy of the notice given.[38]

In this case, there is no mentioned whatsoever in the NPRM of requiring recipients of geographic licenses to prepare a description of technical information to be filed with Cornell. Indeed, the content and spirit of the Commission's proposals suggest no such a change in policy. PRTC urges the Commission

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[36] See NPRM at ¶¶ 5, 20, 21, 34, 39, 40.

[37] Id. at ¶ 21.

[38] MCI Telecommunication Corp. v. FCC, 57 F.3d 1136, 1142 (D.C. Cir. 1995) (citations omitted).

not to create policy in such indirect fashion, particularly in connection with Cornell's apparent lack of objectivity in addressing spectrum management issues.

V. CONCLUSION

For these reasons, PRTC urges the Commission establish interference standards that will govern the Puerto Rico radio coordination process or to regulate Cornell's development of same, to place restrictions on what will constitute reasonable efforts to satisfy Cornell, and to reconsider its decision to apply the coordination filing requirements to services for which individual site licenses are not granted.

Respectfully submitted,

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EXHIBIT 1

Los Angeles Times

SUNDAY, NOVEMBER 16, 1997

Woman's Ordeal Raises Concerns About Cell Phones and 911 Calls

■ **Communications:** Carjackers stalked and shot attorney who could not reach help. Industry practices, U.S. rules limit access.

By MICHAEL A. HILTZIK
TIMES STAFF WRITER

There could hardly have been a worse time for Marcia Spielholz's cellular phone to fail her.

It was a Sunday night in December, and the 37-year-old lawyer was on her way home to Beverly Hills from a Christmas shopping trip to Culver City. Along the way, it was clear, her BMW had attracted the attention of a pair of carjackers.

For 10 terrifying minutes she played cat-and-mouse with a black sedan along National Boulevard and up Castle Heights Avenue, one hand on the wheel, the other frantically tapping 911 onto the keypad of her cell phone.

The call would not go through; she would dial again. Again, the rapid busy signal that meant no connection. Another try, another sickening busy.

Finally her time ran out. The black sedan cut off her escape on Castle Heights. A man approached her car brandishing a gun. Spielholz held the useless phone to her face as if to suggest that she had reached police, hoping she might scare off an attack.

The man didn't seem to be fooled. He thrust a .38 up to the window. "I said, 'Please don't do this,' and turned my head away," she recalled in an interview with The Times.

The bullet blew off a part of her right lower face and came to rest just above the carotid artery delivering blood to her brain. The blast drove the phone into her face, shattering her jaw—and more.

She recently underwent her 11th reconstructive operation, raising her medical bills to more than $250,000. The time she has needed to devote to recuperation and physical therapy after the 1994 shooting forced her long ago to give up her job as a lawyer for MGM Studios. The assailants, who fled after the gunshot, have never been caught.

Spielholz today is haunted by the thought of what might have been, had her cellular phone only accomplished what she had always regarded as one of its fundamental purposes: to summon help.

"The police told me later they were blocks away," she said. "They could have been there in minutes. The [911] dispatcher could have told me what they tell all carjacking victims—to abandon the car. But I never got that far."

Consumer advocates and cellular-industry critics say Spielholz's ordeal, although exceptionally tragic, is not entirely the product of bad luck. Among the contributing factors, they argue, are federal regulatory policies and industry practices that have systematically undermined the quality and accessibility of 911 service for cellular phone customers.

Users of conventional phones have long become accustomed to free 911 access as a public right. In most communities, the emergency number can be reached from a pay phone without dropping a coin, and in some communities the service is so efficient that emergency equipment can even be dispatched before a caller completes the connection.

That is not true in the cellular world. Although public-safety agencies across most of the country are equipped to receive 911 calls from cell phones, no state or local regulators oversee the quality or availability of 911 service to cellular users. (In this state, all cellular calls are fielded first by the California Highway Patrol, which passes them on if necessary to local police or fire agencies.) The cellular industry has also fought and delayed federal rules aimed at broadening access to 911 for all cellular customers. These include one proposal that would ensure that all cellular 911 calls be automatically transmitted on the strongest compatible radio signal available at the moment the call is made.

Spielholz argues that this regulation might have saved her if it were in effect at the time of her assault. One technical study she commissioned for a lawsuit that she filed against L.A. Cellular, her service provider, indicates that the company's signal is still too weak to carry a 911 call in the area of National and Castle Heights—unlike that of AirTouch Communications, the rival cellular carrier in Los Angeles. (Because signal strength tends to fluctuate, L.A. Cellular's signal might be stron-

Please see HELP, A12

HELP: Cell Phones as Safety Devices Questioned

Continued from A1

ger than AirTouch's at other points or at other times of day.)

In other words, under the so-called "strongest compatible signal" standard, Spielholz's 911 call would have automatically shifted to AirTouch's line and her chances of summoning help would almost certainly have improved.

But that is only part of the problem with cellular 911, critics say. The cellular industry has never shown the same commitment to easy access for all callers demonstrated by conventional—or land-line—phone companies, which are regulated by state authorities and routinely provide free 911 access from private and pay phones alike.

Instead, many wireless companies favor their own customers by deliberately blocking 911 calls made on their own signals by callers using competitors' phones, by out-of-towners, or by users of phones that have never been activated by a commercial service (so-called "non-initialized" phones).

"I believe access to 911, no matter how you get there, is an obligation and a public service," says James Conran, a former member of the California Public Utilities Commission whose San Francisco consumer group, Consumers First, has pressed for broader cellular 911 service. "The industry is doing everything it can behind the scenes to kill" FCC rules aimed at widening cellular 911 access, he says.

That's an important issue because a large number of the 55 million cellular phones in operation nationwide are used by their owners primarily as emergency devices.

Industry studies show that as many as 20% of all users pay low monthly fees for service—$9.95 to $19.95 in most cases—but never record even a single minute of elective use. Industry experts believe that such a pattern is characteristic of customers purchasing the service simply for the privilege of reaching help in a tight spot.

Cellular companies have long treasured this so-called "safety and security" market as a wellspring of low-cost subscribers.

In fact, Spielholz argues in court papers that L.A. Cellular promoted the security function of its service in advertising and customer mailings—proclaiming that cell phones are "becoming the crime fighters of the '90s." The company also claimed that two-thirds of cellular subscribers surveyed nationwide cited personal safety as their primary motivation for signing up—without stressing the downside that cellular service can be spotty and unreliable.

That was especially true on the Westside, according to a deposition given in her Los Angeles federal court lawsuit by former L.A. Cellular President Michael Heil, who said that during his tenure the company chronically struggled to keep up with capacity demands in the "core," the West L.A.-Beverly Hills-Culver City area.

Those problems, he said, were manifested in a large number of dropped, or uncompleted, calls and complaints from customers unable to make connections.

L.A. Cellular (which is a partnership of AT&T Wireless and BellSouth) contends in its defense that customers are explicitly cautioned on their service invoice that cellular service can be affected by a wide range of factors, including terrain, foliage and weather.

The company also said in its response to Spielholz's lawsuit and a related class-action complaint that its customer contracts specifically disclaim any responsibility for any subscriber's incidental losses or damages stemming from problems with its service.

The company further says it does not market phones explicitly as safety devices.

"We market the convenience" of cellular service, said Steven C. Crosby, the company's vice president for external affairs. "We do not emphasize or exploit the 'fear factor' " in marketing or advertising.

Spokesmen for the cellular industry at large say that they support in principle efforts to broaden 911 access for cellular users, but that many proposals involve troublesome technical obstacles.

But consumer advocates say those technical problems are exaggerated. They say what the industry really fears is that more customers might discover that most cellular phones are technically capable of placing 911 calls regardless of whether a user has signed up for service—but only if the local cellular companies are willing to transmit the call.

"That's the biggest scam of the cellular companies," says Mark Hiepler, Spielholz's Oxnard-based attorney. "You don't have to sign up to get through."

In California, all cellular carriers now pass all 911 calls to emergency agencies regardless of their source, but there is as yet no law or regulation requiring them to do so. The implementation date of an FCC regulation requiring such access was recently deferred from Oct. 1 to the end of this month, and industry critics fear that further delay may be in the works.

Industry spokesmen argue that encouraging widespread use of unconnected phones would lead to mischief and abuse by irresponsible users.

"We don't want people making prank calls from phones they buy at swap meets," says L.A. Cellular's Crosby.

Law enforcement officials say that's not a significant problem, especially compared with the benefits of broader 911 access.

"The more cell phones on which you can make 911 calls, the better," says California Highway Patrol Commissioner Dwight Helmick.

Cellular spokesmen also contend that because free 911 service is financed in part by state taxes on subscribers, nonsubscribers should not be permitted unrestricted access to 911.

"It's a fairness issue," acknowledges Steve Carlson, executive director of the Cellular Carriers Assn. of California. "People pay for cell service and part of what they pay for is 911 access. If all you need to do is buy the phone, then you wouldn't pay the fees and 911 taxes" that actually finance 911 service.

As for the "strongest compatible signal" standard, "Our position is this is a solution in search of a problem," said Michael F. Altschul, general counsel for the Cellular Telecommunications Industry Assn.

He noted that all cellular phones are manufactured with two radio bands built in, corresponding to the two carriers licensed by the FCC to operate in each metropolitan area. "All cell phones allow the cus-

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tomer to roam on the other band if the preferred carrier doesn't have a serviceable signal," Altschul said. "The user could be educated to know how to flip to the other band."

But critics say that manually reprogramming a cell phone is a laborious procedure involving punching a complex series of numbers into the keypad, almost impossible for the average consumer to accomplish, especially in the heat of an emergency.

Critics argue that even making such a suggestion shows how well the industry understands that it has oversold the reliability of cellular phones as safety devices.

Indeed, when Hiepler asked former L.A. Cellular President Heil in a deposition whether having a cell phone handy in an emergency would give him "peace of mind"—a phrase drawn from a 1994 L.A. Cellular ad campaign—the executive replied:

"Yeah, if a criminal were chasing me and I were to be able to place a call . . . and if my phone were working, if the battery were in proper working order and if I had dialed correctly and if the antenna were in good order and if the cell site had received this call and it was the proper capacity, and if . . . that call were then routed to the California Highway Patrol, and if they were to answer the phone . . . and if those people were to be able to respond correctly. I'm sure [there are] a few *if's* I left out. Then I might have some peace of mind."

'The police told me later they were blocks away. They could have been there in minutes. The [911] dispatcher could have told me what they tell all carjacking victims—to abandon the car. But I never got that far.'

Marcia Spielholz, right, who was shot in the face during a carjacking as she repeatedly dialed 911 on her cellular phone.

ROBERT GAUTHIER / Los Angeles Times